

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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TIMOTHY AARON JOHN, TRAVIS RAY)
JOHN, TIFFANY LYNNAE JOHN,)
TYRONE FRED JOHN, SHIRLEY L.)
PALMER, LESLIE L. PALMER, JALEEN M.)
FLOWERS, and JESSE WADE PALMER,)

3:14-cv-00247-LRH-VPC

ORDER

Plaintiffs,

v.

THE SECRETARY OF THE INTERIOR,)
through its Acting Assistant Secretary;)
BUREAU OF INDIAN AFFAIRS, its officers,)
servants, agents, employees, representatives,)
and attorneys;)

Defendants.

Before the Court is Defendants Secretary of the Interior and Bureau of Indian Affairs' (collectively "Defendants") Motion to Voluntarily Remand Matter to Secretary of the Interior. Doc. #4.¹ Plaintiffs Timothy Aaron John, Travis Ray John, Tiffany Lynnae John, Tyrone Fred John, Shirley L. Palmer, Leslie L. Palmer, Jaleen M. Flowers, and Jesse Wade Palmer (collectively "Plaintiffs") filed an Opposition (Doc. #7), to which Defendants Replied (Doc. #10).

I. Factual Background

In 2004, Congress passed the Western Shoshone Claims Distribution Act ("the Act") to resolve the United States' failure to pay the Western Shoshone Nation ("Western Shoshone") amounts that the United States had promised pursuant to a 1863 treaty between the United States

¹ Refers to the Court's docket number.

1 and Western Shoshone. Doc. #1 ¶¶14, 16. Charged with adopting guidelines for what historical
2 data would be used to determine whether individuals were entitled to compensation under the Act,
3 the Bureau of Indian Affairs (“BIA”) determined that people with twenty-five percent Western
4 Shoshone blood would be eligible for distribution of the funds. *Id.* ¶¶18-19.

5 Plaintiffs are all grandchildren of Fred Hicks Sr. and Leona Mina Dyer, and great-
6 grandchildren of Frank and Hattie Dyer. *Id.* ¶¶3, 27. Plaintiffs submitted documentation to prove
7 that they are twenty-five percent Western Shoshone to the BIA. *Id.* ¶20. This included Census data
8 showing that in 1940, Frank and Hattie Dyer were listed as “Full Blood Shoshone,” as were their
9 children Dorothy, Agnes, Johnson, George, Lillie, Marie, and Mike. *Id.* ¶23. The same Census
10 listed Albert Hicks as “Full Shoshone,” his wife Lorraine as “Full Paiute,” and their children
11 Theodore, Albert Jr., Thelma, Lillie, Fred, Floyd, Donald, and Richard one half Shoshone. *Id.* ¶24.

12 On November 3, 2010, the BIA made a preliminary determination that Hattie Dyer was one
13 half Shoshone. *Id.* ¶26. Plaintiffs provided more information regarding their ancestry to the BIA
14 on November 15, 2010, including documents showing that Hattie Dyer was in fact “Full Blood
15 Shoshone.” *Id.* ¶27. Plaintiffs state that the evidence submitted to BIA shows that Plaintiffs’
16 common grandparents Fred Hicks Sr. and Leona Mina Dyer were each half Shoshone, which would
17 be “sufficient to pass on Western Shoshone lineage” of twenty-five percent for each Plaintiff.
18 *Id.* ¶28. On June 21, 2012, the BIA Washington D.C. office confirmed the regional office’s
19 determination that Hattie Dyer was only half Shoshone. *Id.* ¶29. On October 22, 2013, Leona
20 Hicks wrote to the BIA to inquire why Hattie Dyer’s blood status had changed, and requesting
21 documentation regarding Hattie Dyer’s blood status. *Id.* ¶30. The Superintendent of the Western
22 Nevada BIA responded that the Shoshone Tribe held the enrollment records, and that the BIA could
23 not produce the requested documentation. *Id.* ¶31. Nonetheless, Plaintiffs state that they submitted
24 the Fallon Paiute Shoshone Records to the BIA, and that they confirm that Hattie Dyer is “Full
25 Blood Shoshone.” *Id.* ¶32. Individuals who were eligible for payment under the Act received
26 payments totaling \$35,137.93 each. Doc. #4 at 4.

1 Plaintiffs filed this claim on May 12, 2014, asserting causes of action for (1) deprivation of due
 2 process of a fundamental right, (2) denial of equal protection under the law, and (3) violation of the
 3 Administrative Procedure Act (“APA”). Doc. #1 at 7-8. Plaintiffs seek a declaration that the
 4 BIA’s decision constituted a deprivation of due process under the Constitution, and that the
 5 decision to deny benefits because Plaintiffs were less than twenty-five percent Western Shoshone
 6 was arbitrary and capricious. *Id.* at 9-10.

7 **II. Legal Standard**

8 This action is brought pursuant to the Administrative Procedures Act (“APA”). Under the
 9 APA, a reviewing court may set aside agency actions that are arbitrary, capricious, an abuse of
 10 discretion, or otherwise not in accordance with the law. 5 U.S.C. § 706(2)(A). “A federal agency
 11 may request remand in order to reconsider its initial action.” *Cal. Cmty. Against Toxics v. U.S.*
 12 *E.P.A.*, 688 F.3d 989, 992 (9th Cir. 2012). “Generally, courts only refuse voluntarily requested
 13 remand when the agency’s request is frivolous or made in bad faith.” *Id.* A federal court “is not
 14 generally empowered to conduct a *de novo* inquiry into the matter being reviewed and to reach its
 15 own conclusions based on such an inquiry.” *Fl. Power & Light Co. v. Lorion*, 470 U.S. 729, 744
 16 (1985). Rather, “the proper course, except in rare circumstances, is to remand to the agency for
 17 additional investigation or explanation.” *Id.* Remand is favored so that an agency “can bring its
 18 expertise to bear upon the matter; it can evaluate the evidence; it can make an initial determination;
 19 and, in doing so, it can, through informed discussion and analysis, help a court later determine
 20 whether its discretion exceeds the leeway that the law provides.” *I.N.S. v. Orlando Ventura*, 537
 21 U.S. 12, 17 (2002). In fact, remand is appropriate even “when it is clear that [a court] would be
 22 compelled to reverse the [agency’s] decision” if the agency made a certain finding. *Id.* at 15.

23 **III. Discussion**

24 Defendants request that the Court remand this matter “for further development of the
 25 pertinent Administrative Record and for agency reconsideration of the eight plaintiffs’ eligibility
 26 for inclusion on the Western Shoshone Judgment roll.” Doc. #4 at 5. Plaintiffs argue that remand

1 would only cause unnecessary delay, and that “Plaintiffs should not have to wait another two years
2 and be required to again seek assistance from this Court when the Agency issues another arbitrary
3 and capricious ‘final’ decision.” Doc. #7 at 4. Plaintiffs add that Defendants’ request for voluntary
4 remand is in bad faith “[i]n light of the fact that Plaintiffs’ ancestry wont change and the documents
5 will be the same” upon Defendants’ reconsideration. *Id.* at 7.

6 Plaintiffs have not shown that Defendants’ request for voluntary remand was frivolous or in
7 bad faith. Additionally, the type of evidence at issue, or the lack of new evidence, is not a primary
8 consideration for a court’s determination of whether a defendant’s motion for voluntary remand is
9 frivolous or made in bad faith. *See Cal. Cmty. Against Toxics*, 688 F.3d at 992 (granting
10 defendant’s motion for voluntary remand because the defendant “recognized the merits of the
11 petitioners’ challenges and ha[d] been forthcoming in the[] proceedings”). Defendants’ statement
12 that any additional evidence submitted by Plaintiffs regarding their blood status “will be freshly
13 evaluated in the context of the agency’s issuance of a new decision regarding the plaintiffs’
14 eligibility for inclusion on the Western Shoshone Judgment roll” further belies Plaintiffs’ claims
15 that Defendants’ motion is frivolous or made in bad faith. *See* Doc. #10 at 2. The Ninth Circuit
16 has acknowledged that “administrative agencies have an inherent authority to reconsider their own
17 decision, since the power to decide in the first instance carries with it the power to reconsider.”
18 *Kelch v. Dir. Nev. Dep’t of Prisons*, 10 F.3d 684, 687 (9th Cir. 1993) (quoting *Trujillo v. Gen.*
19 *Elec. Co.*, 621 F.2d 1084, 1086 (10th Cir. 1980)). Accordingly, the Court grants Defendants’
20 motion for voluntary remand, noting that it will still have an opportunity to review the agency’s
21 decision once the agency has reconsidered its initial determination.

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1 **IV. Conclusion**

2 IT IS THEREFORE ORDERED that Defendants' Motion for Voluntary Remand (Doc. #4)
3 is GRANTED.

4 IT IS SO ORDERED.

5 DATED this 5th day of February, 2015.

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7 LARRY R. HICKS
8 UNITED STATES DISTRICT JUDGE
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